



October 24, 2023

SENT VIA EMAIL

Judicial Circuit Assessment Committee

Re: Executive Council of the Florida Bar's Criminal Law Section Comments regarding Proposed Circuit Consolidation AOSC23-25

Dear Members of the Judicial Circuit Assessment Committee:

As Chair-elect of the Florida Bar's Criminal Law Section's Executive Council I respectfully submit this letter as the Criminal Law Section's official position on the Florida Supreme Court's Judicial Circuit Assessment AOSC23-35. These comments are submitted on behalf of the Criminal Law Section of The Florida Bar only, and do not express any position of The Florida Bar.

I. CRIMINAL LAW SECTION OF THE FLORIDA BAR

The Criminal Law Section of the Florida Bar is comprised of state and federal trial and appellate criminal justice lawyers, judges, and academics. Members of the Section are united by their shared goal of providing a fair, just, and efficient criminal justice system for everyone. With over 2,300 members including judges, prosecutors, public and private criminal defense lawyers, law professors, and law students, this diverse membership reflects varied opinions and viewpoints, but are uniformly committed to, among other things, the improvement of the administration of justice.

The Executive Council of the Criminal Law Section is intentionally constituted with members, including prosecutors, criminal defense attorneys, judges, and law professors, who provide a philosophical balance and expertise on the issues relating to matters pertaining to criminal practice. In this way, parochial or ideological views do not sway the full committee. The Executive Council of

the Criminal Law Section voted unanimously in favor of the below stated position in opposition to the proposal for circuit consolidation.¹

II. ORIGIN OF THE PROPOSAL

As stated in the Florida Supreme Court's June 30th, 2023, order appointing the review committee (AOSC23-35), in response to a June 15th, 2023, letter from the Speaker of the House, Paul Renner, the Court opted to exercise its authority to review the makeup of the judicial circuits under Article V, §9 of the Florida Constitution and Florida Rule of Judicial Administration 2.241. As the impetus behind this review, the Court points to Speaker Renner's note that the boundaries of the judicial circuits have been in place without review since 1969. While this is certainly accurate and the Executive Council feels that intermittent review of any rule or policy is a prudent undertaking, the Speaker's letter seems to point to little else other than the passage of time for the need for the proposed consolidation. It is the position of the Executive Council that notwithstanding the fifty-four (54) years since the Court reviewed these boundaries, there is little to no reason for a consolidation. In fact, the Executive Council would point to the over half century of Florida's current judicial makeup as evidence of a success as opposed to a reason for tinkering. The Criminal Law Section believes the current makeup respects the individuality of the circuits and is a system that is well-functioning.

REDUCTION WOULD UPSET THE WELL FUNCTIONING SYSTEM WITH LITTLE TO NO BENEFIT.

The reasons offered to reduce the number of circuits are vastly outweighed by the unintended consequences that will result in doing so. The committee reviewing the current number of circuits has been presented with a series of data points that seem to indicate some financial or functional benefit in having fewer circuits. These data points offer a false horizon and fail to take into account the intangibles of the current system.

¹ Several members of the judiciary and government employees abstained from the vote. No member voted "nay."

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While the Florida Rules of Criminal Procedure provide a universal framework for the system as a whole, each individual circuit currently functions with its own local rules. Slight variations within circuit's local policies can create vast differences in practice. For instance, in Miami Dade County an arraignment date is automatically set within thirty (30) days of arrest, wherein Broward County, only one county North, arraignments get set only after the charging document has been filed by the State. These nuances are the result of years of review by chief judges and respective stakeholders. Consolidating the circuits will lead to confusion and an inevitable drag on the system.

Moreover, each circuit represents a unique demographic and cross section of the Florida population. Florida is a diverse state with its citizens having a wide range of ethnic and socio-economic backgrounds. Some circuits serve densely populated urban areas while others represent rural areas with smaller populations. The court system in every respective circuit represents its demographic and population and has developed local rules to accommodate the citizens that appear before it. Each circuit over the last 54 years has developed a means of best servicing the people who appear in its courts. The current makeup of the circuits promotes and protects that diversity. Creating limited and oversized circuits will create confusion and force a one-size fits all approach as opposed to a tailored criminal court system that promotes efficient prosecution while protecting the rights of the accused.

III. MERGING THE CIRCUITS WILL REQUIRE THE ELIMINATION OF CONSTITUTIONALLY ELECTED OFFICERS.

By merging the circuits in the timeframe suggested, many elected State Attorneys, Clerk of Courts, and Public Defenders will be divested of their positions. These are constitutionally elected officers. By exercising its authority to redefine the judicial circuits and submit those certifications to the Legislature, the court is unintentionally subverting the will of the voters by removing the seat of their elected officers.

IV. EACH CIRCUIT IS UNIQUE AND FUNCTIONS ON WELL ESTABLISHED WORKING RELATIONSHIPS.

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The proposed consolidation continues to ignore the individuality of the circuits as they are and have been for over a half of a century. Each State Attorney, Public Defender, and Clerk of Courts have long-standing and well-developed working relationships not only with one another, but with local law enforcement and administration. By consolidating the circuits, the Court will ostensibly be creating vast amalgamations of different unique entities and will sever longstanding relationships all in an attempt to fit square pegs in round holes. The proposal to consolidate and create larger circuits ignores the subtlety and the balance of the very relationships that allow the court system to function.

V. THE RATIONALE FOR THE PROPOSAL IS SPECULATIVE AT BEST.

The rationale for the proposal suggests that consolidation of the circuits “*might* lead to greater efficiencies and uniformity in the judicial process, thereby increasing public trust and confidence.” (Emphasis added) (Renner 6/15/23 Letter to C.J. Muniz). Respectfully, the Criminal Law Section believes that any consolidation, certainly one so hastily executed, will have the opposite effect. In his request, Speaker Renner concedes that this is based in speculation. It seems to be a very drastic and dangerous undertaking for an ill-defined and theoretical benefit.

For some of the reasons expressed in this letter, but other intangibles yet to be identified, the consolidation will likely cause great upset to the currently well-functioning system. The fallout from these unintended consequences will fracture the public confidence in the system in a manner it may be unable to recover from.

It has also been suggested that consolidating the circuits will have an economic benefit for the State. It remains unclear as to how that benefit will manifest itself, but again the Criminal Law Section believes that confusion that will result from attempting meld vastly different counties within the same circuit will certainly have an immediately noticeable and significantly negative financial impact.

VI. CONCLUSION

The Executive Counsel of the Florida Bar Criminal Law Section acknowledges that the Florida court's system, certainly in the criminal justice arena, is not, nor will ever be perfect. To that end, we appreciate and encourage periodic review and assessment. Nevertheless, as the proverbial "boots on the ground" we feel the circuit make-up that has functioned well for 54 years is not in need of reconfiguration. Moreover, the Executive Council feels doing so is both without good cause and dangerously ignores the rule of unintended consequences. We respectfully request approval from the Florida Bar to publish and make known to the Judicial Circuit Assessment Committee our unanimous position opposing any consolidation of the Florida Court System Judicial Circuits.

Respectfully submitted,

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CLS Executive Counsel, Chair-Elect